

AMENDED IN SENATE MAY 7, 2002

SENATE BILL

No. 1680

Introduced by Senator Polanco

February 21, 2002

An act to add Section 19.5 to the Penal Code, relating to political expression.

LEGISLATIVE COUNSEL'S DIGEST

SB 1680, as amended, Polanco. Political expression: penalties.

Under existing law, unless otherwise specified, a misdemeanor is punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill would state findings and declarations of the Legislature with respect to the history of nonviolent political expression in the United States. This bill would provide that the punishment for certain offenses that do not, among other things, threaten to ~~harm or actually harm any person or property~~ *cause physical harm to property or bodily harm to persons or actually cause physical harm to property or bodily harm to persons*, would be a fine not to exceed \$100, imprisonment in a county jail for a period not to exceed ~~6~~ 2 days, or both that fine and imprisonment if the motive for the violation is found to be political expression, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares the
2 following:

3 (a) Political free speech, the ability to express dissenting
4 political viewpoints, is essential for an authentically free society
5 and is, in fact, one of the features that makes the United States of
6 America and the State of California truly great. Indeed, the United
7 States of America was born through dissent and has, since then,
8 had a long, honorable history of individuals engaged in political
9 expression in order to create a more just society. From time to time,
10 dissenters have expressed their political views through peaceful,
11 nonviolent action, which may have broken existing laws, in order
12 to call attention to an unjust condition or law. Among them, Henry
13 David Thoreau, Margaret Sanger, Martin Luther King, Jr., Cesar
14 Chavez, the labor movement, the civil rights movement, and the
15 women's movement all facilitated the creation of a greater society
16 through peaceful protest and nonviolent civil disobedience.

17 (b) As an incentive for peaceful protesters to reject violence
18 and accept personal responsibility for peacefully engaging in
19 trespass, unlawful assembly, failure to disburse, and other
20 infractions or misdemeanors, authorities have generally refrained
21 from imposing lengthy jail sentences or excessive fines. Harsh
22 punishments for these peaceful demonstrations are unwarranted
23 and counterproductive, and may create a dangerous apathy which
24 could manifest itself in violence. Imposition of modest fines and
25 minor jail sentences recognizes that persons motivated by the
26 desire to express political views are far less of a threat to the public
27 than common criminals and that despite their violation of specific
28 laws, those who engage in peaceful, nonviolent civil disobedience
29 as a means of political expression are serving the worthy purposes
30 of exposing injustice and seeking to improve society.

31 SEC. 2. Section 19.5 is added to the Penal Code, to read:

32 19.5. (a) Notwithstanding any other provision of law, any
33 misdemeanor offense proscribed by Section 69, paragraph (1) of
34 subdivision (a) of Section 148, Section 372, 408, or 409, paragraph
35 (2) or (3) of Section 415, or Section 416, for which the motive is
36 found to be political expression and that does not threaten to ~~harm~~
37 ~~or actually harm any person or property~~ *cause physical harm to*
38 *property or bodily harm to persons or actually cause physical*

1 *harm to property or bodily harm to persons*, does not trespass on
2 any residential property, and does not threaten to interfere or
3 actually interfere with the provision of services by any health care
4 provider or attendance of religious services, is punishable by a fine
5 not to exceed one hundred dollars (\$100), imprisonment in a
6 county jail for a period not to exceed ~~six~~ two days, or by both that
7 fine and imprisonment. The provisions of Section 182 shall not be
8 applicable to any act that comes within the purview of this section.

9 (b) *Upon the request of the defendant, the court shall determine*
10 *whether the violation for which the defendant has been convicted*
11 *falls within the terms of this section. This issue may be determined*
12 *by declarations, affidavits, or other relevant and reliable*
13 *information submitted by the parties.*

14 (c) “Political expression” means any oral or written statements
15 or nonviolent symbolic actions made for the purpose of
16 influencing public opinion on matters of general interest to society,
17 including, but not limited to, *the* enactment or repeal of laws, *the*
18 election or removal from office of public officials, or ~~support~~ *the*
19 *support of* or opposition to court decisions or other public policy
20 matters.
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